

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

September 29, 2004

IN RE:

**ALLEGED VIOLATIONS OF TENN. CODE
ANN. § 65-4-401 *et seq.*, DO-NOT-CALL SALES
SOLICITATION LAW, AND RULES OF
TENNESSEE REGULATORY AUTHORITY,
CHAPTER 1220-4-11, BY THE PRICE GROUP
D/B/A JACK PRICE SPORTS**

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**DOCKET NO.
04-00188**

ORDER APPROVING SETTLEMENT AGREEMENT

This matter came before Director Deborah Taylor Tate, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 30, 2004, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and The Price Group d/b/a Jack Price Sports ("Jack Price" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.¹ The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann § 65-4-405(f) authorizes the Authority to initiate proceedings

¹ See Tenn Code Ann § 65-4-401 *et seq*

relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.² “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction ”³

The CSD’s investigation in this docket commenced after it received eight complaints (TRA File Nos T04-00067, T04-00068, T04-00069, T04-00070, T04-00071, T04-00077, and T04-00078) between March 2 and March 9, 2004 alleging that the complainants, individuals properly listed on the Do-Not-Call register, received telephone solicitations from Jack Price on February 25, 26, and 27 of 2004. The CSD provided Jack Price with notice of these complaints on March 8, March 10, and May 5, 2004.

The proposed Settlement Agreement was negotiated as a result of the CSD’s investigation into the complaints against Jack Price. The maximum penalty faced by Jack Price in this docket is eighteen thousand dollars (\$18,000) arising from the eight unsolicited telephone solicitations and the failure to register as a solicitor with the TRA. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Jack Price is a company located in Irvine, California. Counsel for Jack Price, Mr. Don Baltimore, participated during the Authority Conference on August 30, 2004. Following a discussion

² See Tenn. Comp R & Regs 1220-4-11- 01 *et seq*

³ Tenn Code Ann § 65-4-405(f)

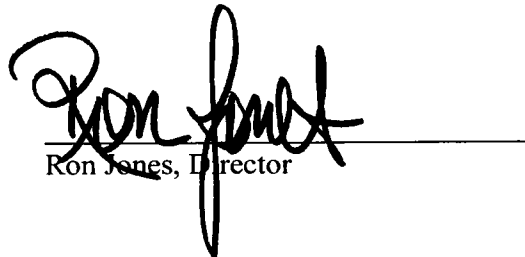
with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of twelve thousand dollars (\$12,000) shall be paid by Jack Price to the TRA no later than sixty (60) days from the date of the Authority's approval of the Settlement Agreement.
3. Upon payment of the amount of twelve thousand dollars (\$12,000) and compliance with the terms of the Settlement Agreement attached hereto, Jack Price is excused from further proceedings in this matter; provided that, in the event of any failure on the part of Jack Price to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.


Deborah Taylor Tate, Director


Sara Kyle, Director


Ron Jones, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:)		
)		
ALLEGED VIOLATIONS OF TENN.)		
CODE ANN. §65-4-401 <i>et seq.</i> , DO-NOT-	)	DOCKET NO.	04-00188
CALL SALES SOLICITATION LAW,)		
AND RULES OF TENNESSEE	)	DO-NOT-CALL	T04-00067
REGULATORY AUTHORITY,	)	PROGRAM	T04-00068
CHAPTER 1220-4-11, BY:	)	FILE NUMBERS	T04-00069
	)		T04-00070
THE PRICE GROUP	)		T04-00071
D/B/A JACK PRICE SPORTS	)		T04-00077
	)		T04-00078
	)		T04-00089

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") The Price Group d/b/a Jack Price Sports ("Jack Price"). This Settlement Agreement pertains to eight (8) complaints received by the CSD from March 2, 2004 through March 9, 2004 alleging that Jack Price violated the Tennessee Do-Not-Call Telephone Solicitation law, TENN. CODE ANN. § 65-4-401 *et seq.*, and its concomitant regulations, TENN. COMP. R. & REGS. 1220-4-11-.07, and the failure of Jack Price to register in the Do-Not-Call Program pursuant to TENN. CODE ANN. § 65-4-405(d), and its concomitant regulations,

TENN. COMP. R. & REGS. 1220-4-11-.04. This Settlement Agreement is subject to the approval of the Directors of the TRA.

The CSD's investigation in this docket commenced after it received three complaints (TRA File Nos. T04-00067, T04-00068 and T04-00069) on March 2, 2004. It is alleged by the complainants in TRA File Nos. T04-00067 and T04-00069 that they each received an unlawful telephone solicitation from Jack Price on February 25, 2004. In TRA File No. T04-00068, the complainant alleged receipt of the unlawful telephone solicitation from Jack Price on February 27, 2004. Each complainant is a person whose residential telephone number is properly listed on the Do-Not-Call register. The CSD sent notice of these three complaints to Jack Price on March 8, 2004.

The CSD received a complaint in TRA File No. T04-00070 on March 8, 2004, in which the complainant alleged he received an unlawful telephone solicitation from Jack Price on March 3, 2004. The CSD received a complaint in TRA File No. T04-00071 on March 4, 2004, in which the complainant alleged receipt of an unlawful telephone solicitation from Jack Price on February 26, 2004. Each complainant is a person whose residential telephone number is properly listed on the Do-Not-Call register. The CSD also provided Jack Price with notice of these two complaints on March 8, 2004.

The CSD received a complaint in TRA File No. T04-00077 on March 9, 2004, in which the complainant alleged that he received an unlawful telephone solicitation from Jack Price on February 26, 2004. In TRA File No. T04-00078, the CSD received a complaint on March 8, 2004 alleging receipt of an unlawful telephone solicitation from

Jack Price on March 3, 2004. Each complainant is a person whose residential telephone number is properly listed on the Do-Not-Call register. The CSD provided Jack Price with notice of these two complaints on March 10, 2004.

The CSD received the last complaint (TRA File No. T04-00089) on March 9, 2004. It is alleged by the complainant that she received an unlawful telephone solicitation from Jack Price on March 3, 2004. The complainant is a person whose residential telephone number is properly listed on the Do-Not-Call register. The CSD provided notice of this complaint to Jack Price's counsel on May 5, 2004.

TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11-.07(1) prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. TENN. CODE ANN. § 65-4-405(d) and TENN. COMP. R. & REGS. 1220-4-11-.04 require persons or entities desiring to make telephone solicitations to residential subscribers to register with the TRA. TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Jack Price in this proceeding is eighteen thousand dollars (\$18,000), arising from the eight (8) unsolicited telephone solicitations mentioned above and the failure to register as a solicitor with the TRA.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Jack Price is located in Irvine, California and has approximately seventeen (17) seasonal and full-time employees. After receiving notice of the complaints, Jack Price contacted the CSD and expressed an interest in resolving this matter. The CSD has received no additional complaints against Jack Price from Tennessee consumers since March 9, 2004.

In an effort to resolve the alleged violations revealed during the CSD's investigation, including the complaints represented by the file numbers captioned above and other complaints whether known or unknown by the CSD prior to the execution of this Settlement Agreement, the CSD and Jack Price agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

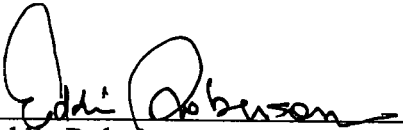
1. Jack Price admits that the complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11-.07(1), and TENN. CODE ANN. § 65-4-405(d) and TENN. COMP. R. & REGS. 1220-4-11-.04.
2. After receiving notice of the complaints, Jack Price contacted CSD and expressed an interest in resolving this matter.

3. Jack Price agrees to pay twelve thousand dollars (\$12,000.00) in full settlement of all violations and complaints, whether known or unknown by the CSD prior to the execution of this Settlement Agreement. The first installment of \$10,000 will be remitted to the Office of the Chairman of the TRA no later than thirty (30) days following approval of the Settlement Agreement by the TRA Directors.¹ The remaining \$2,000 shall be remitted to the TRA no later than sixty (60) days following approval of the Settlement Agreement by the TRA Directors. Upon payment of the amount of twelve thousand dollars (\$12,000.00) in compliance with the terms and conditions of this Settlement Agreement, Jack Price is excused from further proceedings in this matter.
4. Jack Price agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. Jack Price agrees that a designated representative will participate telephonically or in person at the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that Jack Price fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Jack Price shall pay any and all costs incurred by the TRA in enforcing the Settlement Agreement. Should any violation of the provisions of paragraph 4 occur subsequent

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville, Tennessee 37243, referencing TRA Docket Number 04-00188.

to the date of this Settlement Agreement, such violation shall be treated as a new violation and shall not be deemed cause to re-open this docket.

7. If any clause, provision or section of this Settlement Agreement for any reason is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability, shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
8. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.


Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

8/12/04
Date

The Price Group d/b/a Jack Price Sports

By 

H. LaDon (Don) Baltimore

Legal Counsel for The Price Group d/b/a
Jack Prices Sports

8/10/2004
Date